

Banks on Sentence

Sentencing Alert No 152

23 February 2017

Offences against the Person Act 1861 s 18

Glassing

R v Dixon 2016 EWCA Crim 1258 D pleaded to wounding with intent. V went to his car and D, a complete stranger to him, asked for a lift. V said, "No" and explained why. D hit V on the back of the head with a bottle using great force. The bottle shattered. There was then a struggle and V managed to get D in a headlock. D struck V upwards with the broken bottle. D's neck was damaged badly. V let go and D ran off. The glass had 'nicked' V's jugular vein and he was operated on in hospital very soon afterwards. Multiple blood transfusions were required. V now had a significant scar and numbness around the scar. There were serious ongoing effects for V. D was interviewed and said he had taken cider, crack and cocaine that day. He denied an intent to cause GBH. D was aged 32 and had a long history of offending. Most of his 69 offences were of an acquisitive nature. There was an ABH in 2006 (2 years) and an affray in 2008 (2 years' extended sentence (1 years' custody and 1 year's extended licence). D was on bail for burglary at the time of the offence. The Judge found it was a Category 1 offence and started at 18 years. Held. We start at 15 years, so with plea, **13 years'** not 17 years' extended sentence (10 years' not 12 years' custody and 3 years' not 5 years' extended licence).

Sex Offences: Assault

Public transport

R v Taaffe 2016 EWCA Crim 1946 D pleaded (10% credit) to four counts of sexual assault. He approached four women (aged 33, 52, unknown and 43) on his bike and then seized or pinched either their bottom or their breast and then cycled away. He seemed to think it was a joke. For example, V was with her 3-year-old child. She was grabbed from behind with some force and D pinched her bottom. V and her child were upset. D put her arm around her shoulder and it hurt her. D then cycled away. This victim was caused the most psychological harm. D had no convictions for sexual offences. He did have two non-dwelling burglaries and two community order breaches. But D had been out of trouble for 10 years. When aged 6, he was put in care, due to neglect. The pre-sentence report said he was immature. The Judge placed the case in Category 2A. Held. D had not targeted the victims in the sense used in the guideline. These were in Category [3B]¹. If there had been a single incident, custody would not have been justified. **12 months** made of concurrent sentences, not 27 months (10 and 17 consecutive).

1. The judgment says 1B which must be a typo. 3B makes more sense looking at the result and the guideline.

Sex Offences: Historical

Buggery/anal rape

Att-Gen's Ref 2016 Re LG 2016 EWCA Crim 1409 D was convicted on his third trial of attempted buggery. In the mid-1990s when D was in his late 20s, his nephew V, was aged 5 or 6. They both stayed at D's parents' house. V slept in a sleeping bag on the floor. One morning, D pulled V out of his sleeping bag and onto D's bed. D pulled V's underpants off and rubbed his penis against V's back and buttocks until his penis was erect. Then he tried to insert his penis into V's anus. V cried out and D stopped. V moved to the bottom of the bed and started crying. D told him to be quiet and tried to insert his penis again. V cried out and D desisted. When V was aged 16 he saw D with another young relative. His memory of D's attempt made him cut his throat. Many years later the abuse was reported to the police. In interview D lied. D was aged 58 and of good character. Held. We start with the guideline for rape of a child under 13 and make it Category 2. It is unclear whether it was an abuse of trust or not. If so the starting point is 13 years. If not, it is 10 years. The maximum was 10 years. The passage of 30 years was some mitigation. Offender of Particular Concern Order with **7 ½ years** custody not 5.

Physical non-penetration Victim(s) aged 13+

Att-Gen's Ref 2016 Re O 2016 EWCA Crim 956 In 2016, D was convicted of eight indecent assaults. D married W in 1968. D, a former police officer, sexually assaulted his sister-in-laws and W's sister-in-law. V1 told her son D had raped her and he demanded £10,000 from D. In [probably] 2014, D told the police and V1 complained to the police about D assaulting her. V1's four sisters denied D had abused them. D was acquitted of rape and indecent assaults which were related to the rape. On a date unknown, D was convicted of a specimen indecent assault concerning D touching V1's breasts. V1's sisters, V2-V4 then said D had assaulted them by touching their breasts. V2, said D had touched her breasts in 1966-1968 before D was married. V3 was assaulted when she was aged about 13 in 1972-73. The counts for V2 and V3 were specimen counts. V4 gave a similar account but agreed in cross-examination that the conduct amounted to brushing. V4 also said when she was aged 18 in 1976 and 1977, D tried to kiss her when giving her a driving licence. D also tried to put his hand inside her jumper and fondle her breasts. V4 pushed him away. When V4 was staying with D, D entered her bedroom when V4 was only in her underwear. D pushed up her bra exposing her breasts. V4 became hysterical and D left. V5 was assaulted at her home when she was aged 35 in about 1980. She was married to W's brother. D was in his police uniform. D approached her from behind, cupped her breasts and pulled her body to his. She pulled away and D left. In interview D denied all the allegations. D claimed that V1 was a fantasist and others had grudges etc. D was aged 69 and of previous good character with police and other references. The prosecution said the offences equated with the offence of sexual assault. Indecent assault had then a maximum of two years. The Judge found it was Category 3B offence and gave D **conditional discharges**. On appeal the prosecution said it was Category 3A. Held. It was a Category 3B case (the range was medium level community order to 26 weeks' custody. A community order was the suitable penalty but we don't think it is necessary to substitute that order. Appeal dismissed.

Duty Evasion

Actual loss not known

R v Alshateri 2016 EWCA Crim 1266, 2017 1 Cr App R (S) 3 (p 11) D pleaded to seven counts of possession of counterfeit tobacco and two counts of sale of such goods. In 2012, D started running what was intended to be a legitimate shop. In December 2013, illegal trading was identified. In the spring and summer of 2014, test purchases identified counterfeit tobacco at half the normal retail value. Later seizures of the counterfeit tobacco were made. In December 2014, D was interviewed and he lied. More test purchases revealed illicit products in January 2015. Later that month D's assistant was stopped with 13,000 cigaettes and 11.6 kilos of tobacco. It was accepted from January 2015, the shop only sold illegal tobacco products. Further, by the end of the trading the loss to the revenue was up to £3,000 a day. D was now aged 41 and of good character. The Judge found there was a cash [turnover] of between £100,000 and £300,000. It was aggravated by the warning when the trading standard officers were involved. The Judge considered it was a Category 5 in the *Fraud, Bribery and Money Laundering Offences Guideline 2014*, based on a starting figure of £300,000. He started at 4 years. With credit he reduced it to 32 months. Held.

The guideline figure is based on the loss to the Revenue and here that was not known. We start at 3 years, so with plea **2 years**.

Theft

Shop theft Organised groups

R v Hamidy 2016 EWCA Crim 1320 D pleaded to conspiracy to steal. He and other experienced career burglars conspired to steal high value items from shops, hotels and other places. Goods worth £220,000 were taken over 2 ½ months. Vehicles obtained in burglaries were used and number plates were stolen to disguise motor vehicles. Each of the team was forensically aware, changing vehicles, phones, clothing regularly and keeping phone contact to the minimum. D was then aged 20 and now 22. He had nine appearances for 15 offences including robbery, theft and four handlings. The pre-sentence report said the offence coincided with periods of homelessness and was linked to cocaine and cannabis addiction. The Judge said it was a Category 1 offence and D was a key player who was involved in six of the thefts where very high value goods were taken. Held. D was the youngest defendant. He was not involved in the beginning. D was the first to acknowledge his guilt by a significant period. We start at 5 ½ years, not 7 (the maximum). With full credit, **3 years 8 months** not 4 years 8 months.

Threats to kill

Threat to a probation officer

R v Gallagher 2016 EWCA Crim 1846 D pleaded on his trial date to threats to kill. D had an extremely bad criminal record. He has numerous convictions for offences of violence, including ABH, affray and similar. He also had a number of convictions for offensive weapons and bladed articles. In 2013, for robbery and assault with intent to resist arrest, he received 32 months. On release his supervising probation officer was V. D breached his hostel rules and was recalled. A female resettlement worker, R, was trying to find D accommodation but was unable to find any. She visited D in prison to inform him. D became angry. He blamed V and said, "I am going to kill the fucking bastard. It's his fault." Another person present asked him what his plans were on his release and D said: "I'll get a tent and a machete". Those present saw the link between the remarks. R continued to try to pacify him and suggested D contact the Salvation Army upon his release. R didn't take the aggression as directed at her and D thanked her for her help. R informed her manager about the remarks and V was extremely concerned by what he was told. D was arrested on the day he was due to be released. When questioned D stated that he hated V and he admitted the remarks but said the machete was for his own safety. D blamed V for his position. He also said he thought that V would have considered the threat a "daft comment". The pre-sentence report assessed D as presenting a high likelihood of general re-offending. It was also assessed that he presented a high risk of serious harm to others.

The psychiatric report described a history of significant violence. D had stated that in the past he had stabbed people during robberies, he had stabbed someone who had tried to rob him and he had attacked people with knives. D said he had hit people, tried to strangle them and done serious damage to many victims. He had also been the victim of violence on numerous occasions. He stated that he carries a knife on him at all times. In the past he has also carried an axe, a machete and other weapons. The psychiatrist diagnosed a personality disorder. The Judge considered V a very vulnerable man in a very vulnerable position. She started at 5 ½ years and reduced that to 5 years. Held. This was a very bad case of its kind. The reference to a tent and machete would have had a chilling effect on those who heard it and on V. We start at close to 4 ½ years, so with plea, a 7-year extended sentence (**4 years'** custody and 3 years' not 5 extended licence)

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